

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested. Claims 1-20 are pending in this application. Claims 1-2, 5-18 and 20 have been withdrawn from consideration. Claims 1-8 and 13-20 are the independent claims.

Applicants respectfully note that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicants respectfully request that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicants also respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Specification Amendment and Claim to Priority**

By the present Amendment, the Specification is amended. In the present application, Applicants' priority claim to International Patent Application No. PCT/JP2004/016433, Japanese Application No. 2003-378923 and Japanese Application No. 2004-224771 was included in the Declaration filed on December 29, 2008. In addition, the information concerning the priority claim was recognized by the USPTO as shown by its inclusion in the Official Filing Receipt mailed September 21, 2010. Applicants now submit the present Amendment to amend the specification to

include specific reference to these priority claims. Applicants request entry of this amendment to the specification.

Furthermore, by the present Amendment, Applicants enclose an English translation of Japanese Patent Application No. 2003-378923, filed on November 7, 2003, along with a *Statement of Accurate Translation* signed by the translator. Thus, pursuant to 37 C.F.R. §1.55(a)(4)(B), Applicants have “perfected” the claim of priority to Japanese Patent Application No. 2003-378923.

### **Rejections under 35 U.S.C. § 112**

Claims 3 and 4 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 3 and 4 accordingly. The Applicants, therefore, respectfully request that the rejection to Claims 3 and 4 under 35 U.S.C. § 112, second paragraph be withdrawn.

### **Rejections under 35 U.S.C. § 102**

Claims 3 and 4 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Xu et al. Applicants respectfully traverse this rejection for the reasons detailed below.

Applicants submit that Xu does not qualify as art under §102(a) or (b) because the publication date of Xu (September 23, 2004)<sup>1</sup> does not precede the earliest date of invention currently established by the present application (November 7, 2003, which is the filing date of Japanese Application No. 2003-378923). Xu also does not qualify as art under §§102(c), (d), (e), (f) and (g).

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<sup>1</sup> See MPEP § 715(III)(C) (“A printed publication, including a published foreign patent application, is effective as of its publication date, not its date of receipt by the publisher”).

Accordingly, Applicants contend that Xu cannot be validly applied against the present application to support a rejection under any section of 35 U.S.C. § 102. The Applicants, therefore, respectfully request that the rejection to Claims 3 and 4 under 35 U.S.C. § 102(a) be withdrawn.

**CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Erin G. Hoffman, Reg. No. 57,752, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

  
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